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**Cannot Confer Title.**—An oral agreement between the parties fixing a boundary was proper evidence for consideration of the jury on the subject of the true location on the ground of the boundary line in controversy, but such agreement could not confer title.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 595.]

Error to Circuit Court, Prince Edward County.

Petition by Isham Booth against John W. Bradshaw to ascertain and fix land boundary. Judgment for plaintiff, and defendant brings error. Reversed in part, and remanded.

*J. Taylor Thompson*, of Farmville, for plaintiff in error.

*Watkins & Brock*, of Farmville, and *W. Moncure Gravatt*, of Blackstone, for defendant in error.

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SOUTHERN RY. CO. v. ADAMS.

Jan. 20, 1921.

[105 S. E. 566.]

**1. Negligence (§ 121 (1)\*)—Burden of Proof on Plaintiff.**—He who alleges negligence must establish it.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 343.]

**2 Master and Servant (§ 265 (6)\*)—Railroad's Negligence within Federal Act Must Be Proved.**—In an action for death of a railroad employee under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), plaintiff must prove that death was caused by railroad's negligence; there being no presumption of negligence in such case from the mere fact of the accident.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 413, 691.]

**3. Master and Servant (§ 285 (3)\*)—Evidence Held Insufficient for Submission of Railroad's Negligence as to Section Hand Killed by Train.**—In an action against railroad for the death of a section hand struck by a train running in the direction he was traveling when he was last seen, evidence that his body in an injured condition was found beside the track held insufficient for submission of the issue of negligence to jury; the cause of the accident being a matter of conjecture.

Error to Circuit Court, Orange County.

Action by Eliza Adams, administratrix of Thomas D. Adams, suing for the benefit of William Adams and Eliza Adams, against the Southern Railway Company. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

*Shackelford & Robertson*, of Orange, for plaintiff in error.

*Browning & Browning*, of Orange, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.